

PLANNING APPEALS COMMISSION AND WATER APPEALS COMMISSION

INDEPENDENT COMPLAINTS AUDIT PANEL

2021/2022 AND 2022/2023

INTRODUCTION

1. This is the report of the Planning Appeals Commission and Water Appeals Commission (“the Commission”) Independent Complaints Audit Panel for the years 2021/22 and 2022/23.

2. The Commission is an independent statutory body with responsibility for determining planning and water appeals. It has a published complaints policy which defines a complaint as *“any expression of dissatisfaction by any party involved in an appeal or examination/enquiry/hearing”*. The policy is non-statutory and makes provisions for an Independent Complaints Audit Panel to conduct an annual audit of the Commission’s handling of complaints. The Panel comprises two individuals appointed respectively by the Royal Town Planning Institute (Northern Ireland) and the Bar Council of Northern Ireland. Panel members are required to have an understanding of the Northern Ireland Planning process and may not be former members of the Commission.

3. We confirm that both members of the Panel have been nominated by our respective professional bodies and satisfy the criteria for appointment. This report represents the joint view of both Panel members.

4. The Commission’s complaints procedure is published on its website and comprises the following key features:-
 - a) Complaints should be made within 6 months of the date of a decision.
 - b) Complaints will be acknowledged within 7 working days of receipts and a full response will normally be issued within 4 weeks of receipt. If a complaint is received in relation to a matter still under consideration by the Commission, the complaint will be addressed once the decision has been issued. If a response is not possible within these time frames, the individual will be advised of the likely response time.
 - c) All complaints are investigated by either the Chief Commissioner, Deputy Commissioner or, if appropriate, Senior Administration staff who were not involved in the appeal.

- d) Responses to complaints are given in writing and will explain the outcome.
- e) A complaint will be considered to be “*justified*” if it is considered that “*there is substance in the allegation made by the complainant.*”
- f) The Commission has no power to change or vary its decisions, once issued. Where a complaint relates to the reasoning or outcome of an appeal, the decision may not be varied via the complaints procedure. If an error is identified, an apology should be issued, if appropriate;
- g) If a legal challenge is initiated in parallel with a complaint, the issue will be addressed through the legal process.

OVERVIEW OF COMPLAINT AUDIT PROCESS

- 5. The Commission received three complaints during 2021/22 and three complaints during 2022/23.
- 6. One member of the Panel had a professional involvement in the underlying subject matter of one complaint and declared a conflict of interest. In accordance with our terms of reference, this complaint file was reviewed by the other panel member and is reported on separately below.
- 7. In relation to the remaining five complaints, the entire complaint file was reviewed separately and discussed by both members of the Panel. The underlying appeal file was also made available to both Panel members for inspection but was required in only one appeal.
- 8. In relation to one complaint we requested follow up information. This information was provided by the Commission and is explained below. We also made a number of additional requests for information of a more general nature, which are also explained below.
- 9. We decided for ourselves the review methodology. We followed the same procedure as in previous years. We reviewed all complaints against each of the following areas:-
 - 1) Subject matter of the complaint;
 - 2) Timeliness of response;
 - 3) Compliance with complaints procedure;
 - 4) Complaint handling;
 - 5) Complaint outcome.

FINDINGS

(1) Subject matter of complaint

10. We divided complaints into three broad areas, depending upon the subject matter of the complaint:- Administration; Conduct of appeal; and Content of the decision. Some appeals raised more than one issue and have been recorded accordingly. The breakdown of the subject matter of complaints was as follows:-

Administration	-	0
Conduct of appeal	-	3
Content of the decision	-	4

(2) Timeliness

11. In contrast to previous years, we noted that the guideline timeframes for both acknowledging and responding to complaints was not observed in the majority of complaints during the 2021/22 and 2022/23 years. Our findings were as follows:-

- 1) **Acknowledgment.** Complaints were acknowledged within the guideline period of 7 working days in 4 cases. In one case no acknowledgment was provided.
- 2) **Substantive response.** The guideline period of 4 weeks was observed in only 1 case. In the remaining cases, the time periods for response were 4 weeks and 2 days; 6 weeks; 15 weeks; 4 months and 1 year.
- 3) **Holding response.** In none of the cases in which the substantive response was delayed could we find a holding response, estimating the likely timescale for a substantive response.

(3) Compliance with Complaints Procedure

12. Save for the timing of substantive responses, we found that the Commission complied with its Complaints Procedure in every case. We found that in each case, the complaint was investigated by either the Chief Commissioner or Deputy Chief Commissioner. In the majority of cases, the subject matter of the complaint related to the conclusion reached by the Commissioner or the reasoning followed. In each such case, the substance of the

decision was reviewed as part of the complaints process and a detailed substantive response issued which both explained the Commission's inability to change the decision and provided an explanation of whether the original decision was considered to have been appropriate.

13. We were also satisfied that an appropriate response was given to the two complaints which raised issues of procedure. In one case, the complaint formed part of a large body of requests for information regarding a forthcoming appeal hearing. The response explained clearly how the individual had misunderstood the Commission's procedure. In that case, in the period prior to the appeal hearing, the Commission had corresponded about the appeal only with those objectors who had filed a Statement of Case with the Commission. The complainant had understood that the Commission would communicate with all parties who had objected to the original planning application. The second complaint which raised a procedural issue concerned an alleged inequality of arms between opposing sides during the course of the appeal hearing. It also raised a possible ambiguity within the Commission's Protocol for conducting remote appeal hearings. The Commission gave a full explanation of its procedures and also acknowledged that the published protocol would benefit from further clarification.
14. The complaint file in which a conflict of interest arose for one panel member was reviewed by the other panel member independently. This complaint related to how a public inquiry hearing was conducted and a perception of bias on the part of the Commissioner chairing the inquiry. The Commission provided a full response to the complainant and confirmed that the hearing itself was conducted in accordance with the Commission's published procedures and that they were satisfied that no bias was shown.
15. We were satisfied that in all cases, the Commission had responded to the substantive complaint in accordance with its published procedure.

(4) Complaint Handling

16. Having reviewed the content of each complaint and the response of the Commission, we were satisfied that the substance of the response in each case was appropriate. The outcome of the complaint and the reasons for the Commission's disposal of the complaint were explained in clear terms to the complainant.

17. In the case of the complaint for which a response was delayed for over one year, an apology was issued. The complainant was also provided with information about how a further complaint might be made to the Public Service Ombudsman on the ground of maladministration. We consider this was appropriate in the circumstances.
18. In all cases in which the complaint related to the substance of the original appeal decision, the response explained clearly that the Commission had no power to change the original decision but provided an analysis of the reasons for the decision and an opinion on whether the decision had been appropriate.

(5) Complaint Outcome

17. The outcomes of the complaints we reviewed were as follows:-

Not justified	-	5
Justified	-	1

18. The complaint found to be justified arose out of an appeal against an EIA screening decision. The Commission had allowed the appeal and found that the development proposal was not EIA development. The appeal decision prompted a complaint by the relevant Council which criticised many aspects of the Commission's reasoning. The Commission responded to all criticisms. It found one criticism of the appeal decision to be justified and that the remaining criticisms were not justified. However, it also concluded that the overall decision of the Commissioner on whether or not the development was EIA development had been appropriate. The complaint was therefore only justified in part. We consider that the approach of the Commission in responding to this complaint had been appropriate.

FURTHER INFORMATION

19. In one case, we requested further information as part of our examination of the complaint handling. The complaint in question is referred to at Paragraph 13 above in which it was contended that the Commission's Protocol on the conduct of remote hearings was ambiguous and had resulted in an inequality of arms at the appeal hearing. In its response to the Complaint, the Commission provided assurance that it would review the Protocol

in question. We requested an update on whether this action had been taken. The Protocol which was in operation at the time of the relevant complaint had been published on 5 January 2022. The response to the complaint was issued on 18 April 2023. The response of the Commission to our request for information was to confirm that no further update to the Commission's protocol for the conduct of remote hearings had been published since January 2022 (version 4).

20. The Complaints Procedure states that if legal proceedings are initiated while a complaint is being considered, the matter will be addressed through those proceedings. We therefore also asked the Commission whether any complaints had been made in parallel with legal proceedings. In response, the Commission confirmed that no complaints were made in parallel with legal proceedings.
21. In light of the connection between the complaints procedure and the commencement of legal proceedings, we also asked how many formal judicial review Pre-Action Protocol letters had been received, how many responses were issued and how many appeal decisions were the subject of judicial review challenge. We acknowledge that this request included information which was beyond the strict remit of the complaints procedure. However, we consider that since there is overlap between the manner in which complaints are made and formal correspondence threatening legal action, the request was appropriate in order to provide transparency to the complaints process as a whole. The response of the Commission was to confirm that there had been one Pre-Action Protocol letter received in 2021/22 and that one appeal decision had been the subject of judicial review proceedings in the same period. In 2022/23, three Pre-Action Protocol letters were received, with one appeal decision being subject of judicial review in 2022/23.

RECOMMENDATIONS

22. We noted that in a majority of cases, the timeframe for issuing a substantive response to the complaint was not observed. We acknowledge that the target timescale of four weeks for issuing a substantive response to a complaint may be challenging, particularly if substantial investigation is required or if the Commissioner in question is unavailable. However, we also consider that a response within that time period can be of legal significance. A formal complaint may be a pre-cursor to possible legal challenge and the Commission's response to the complaint may inform a decision on whether or not to challenge the original decision.

Individuals may legitimately choose to raise a matter of concern by means of complaint rather than issuing a more formal pre-action letter, threatening legal proceedings. An outer time limit of three months applies to any legal challenge to a decision of the Commission. In planning cases, Courts will always expect proceedings to have been issued promptly. This is particularly important where the Commission has granted planning permission or has otherwise made a decision which affects third party rights. In those cases, Courts will frequently expect challenges to have been commenced within six weeks of the date of decision. For this reason, we consider that the four-week time period for responding to complaints is both appropriate and important.

23. We consider that it would be advisable for the Commission to establish a more formal procedure for monitoring progress of a complaint with a view to ensuring that individuals receive a timely response or an indication of the expected response time. A holding reply will be particularly important if it is expected that the substantive response may be delayed. We consider that it would be appropriate for a dedicated member of staff to be assigned to this task. The individual could establish a simple spreadsheet or other electronic procedure for recording details such as date of receipt of the complaint; date of acknowledgment; date when complaint is assigned to a Commissioner for investigation; dates of all correspondence to the complainant; dates of all communications with the original Commissioner. The procedure should also be used to remind the investigating Commissioner if timescales are likely to be exceeded.

We recommend that the PAC should have a dedicated member of staff an an electronic recording system in order to monitoring compliance with the Complaints Procedure timescales.

24. In our previous report, we recommended that the investigating Commissioner should record on the complaint file the steps which were taken to investigate a complaint. We recommended that the record should include copies of all written communications between the investigating Commission and the Commissioner who made the decision. If there was no formal correspondence it should include a brief record of any other steps taken, such as the fact of discussion with the Commissioner or communication with a third party. We noted in our review of complaints files that this recommendation did not appear to have been taken up during the 2021/22 and 2022/23 years.

25. While the content and subject matter of complaints this year were generally straightforward, we remain of the view that the process of complaints auditing and the objective of transparency in complaint handling would be furthered if some written record of the investigation process was maintained. We do not consider that this should be a complex task, nor would it require extensive resources. It may be capable of integrating this into the monitoring system which we have recommended above. Even if an electronic system is not used, we consider that it might be appropriate for the Commission to develop a pro forma complaint record which could be appended to the front of a complaint file. It could be used to record (even in manuscript) basic details such as the date of receipt, acknowledgment and response. It might enable the investigating Commissioner to record the nature of the complaint (e.g. administration, procedure or the substance of a decision). We consider that categorisation remains important for the reasons we gave last year. There is a distinction between complaints raising matters of procedure and those raising concerns about the substance of a decision. In the latter case, there is less requirement for consultation with the original Commissioner as part of the investigation. However, where matters of administration or procedure are raised, we consider it is important that consultation take place with the Commissioner as part of the investigation process. We also consider that it would be appropriate to record at least the fact of such consultation, if not a summary note of the response. If the Commission considered it to be of assistance, we would be willing to provide further advice or comments on this issue.

In the interests of complaint monitoring and transparency in the complaints process, we recommend that the Commission should maintain a formal record of the procedural steps taken during the course of the investigation of a complaint.

26. The Commission gave assurances to one complainant that the Remote Hearing Protocol document would be reviewed and updated to ensure clarity for all participants at hearings. We note that such an update has not been undertaken to date and would urge the Commission to review their protocol as per their response to that complainant.

We recommend that the Commission should review its Remote Hearing Protocol and bring this document up to date.

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